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PROPERTY AND SPECIAL TAXES DEPARTMENT
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March 2, 2010

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2010-1 for your information and review. The annotations included in this CLD are new proposed annotations (underlined) and/or suggested revisions or deletion of existing annotations (indicated by ~~strikeout~~ and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Friday, April 2, 2010**. These may be sent by e-mail using the "Comments Form" on the Board's website (www.boe.ca.gov/proptaxes/cld.htm), fax or mail. Here is the mailing address:

Board of Equalization
County-Assessed Properties Division
ATTN: Annotation Coordinator
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Please note, the new annotations and/or suggested revisions of existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After approval of the final version by the Board's Legal Department, the changes will be posted to the Board's website under "Annotations" (www.boe.ca.gov/proptaxes/annocont.htm). After all proposed changes have been resolved, the CLD will become obsolete and deleted from the website.

This CLD is posted on the Board's website at www.boe.ca.gov/proptaxes/cld.htm. Copies of the backup correspondence are linked to each annotation via the annotation number. If a link does not work, please let us know by using the "Comments Form" on our website (www.boe.ca.gov/proptaxes/cld.htm). If you have any questions, please contact Glenna Schultz at 916-324-5836.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG/grs
Enclosure

PROPERTY AND SPECIAL TAXES DEPARTMENT

PROPERTY TAXES CURRENT LEGAL DIGEST No. 2010-1

March 2, 2010

215.0000 CERTIFICATED AIRCRAFT

215.0020 **Foreign-Owned Aircraft.** ~~Aircraft owned by foreign governments are exempt from personal property taxation by Revenue and Taxation Code section 5331. Aircraft owned, based and registered abroad and used exclusively in international commerce are exempt from property taxation (*Scandinavian Airlines System, Inc. v. Los Angeles County*, 56 Cal.2d 11, cert. denied, 368 U.S. 899). Since foreign carriers cannot engage in interstate commerce, no foreign aircraft are subject to property taxation. C 11/1/82; C 10/21/2002.~~

Delete – Superseded by First Appellate Court decision Air China Limited v. San Mateo County (2009) 174 Cal.App.4th 14.

220.0000 CHANGE IN OWNERSHIP

220.0329 **Leases.** ~~The transfer of the primary ownership interest in a lease constitutes a change in ownership for appraisal and assessment purposes. The mere passage of time which reduces the remaining term of a lease originally for more than 35 years to, for example, 30 years results in a shift of the primary ownership interest in the lease back to the lessor. However, since there has been no transfer by the lessor, no change in ownership has occurred. C 12/24/91.~~

Delete - The mere extension of a leasehold term to over 35 years, which was originally or at once already over 35 years, and for which a reassessment already occurred upon the lease's original creation or original extension to over 35 years, is not the "creation" of a lease and should not result in another reassessment.

220.0451.010 **Original Co-owner Transfers.** Four persons equally owned real property as individuals. In 1990, they transferred the real property to a partnership in a transaction that was excluded from change in ownership under Revenue and Taxation Code section 62(a)(2). As a result of the excluded transaction, those four persons became original co-owners. In 2004, partner A transferred his 25 percent partnership interest to the partnership, resulting in the remaining partners each owning a 33.33 percent interest. In 2006, partner B transferred his 33.33 partnership interest to the two remaining partners.

The transfer of A's 25 percent interest in the partnership was not excluded from change in ownership and therefore should be counted and cumulated for purposes of Revenue and Taxation Code section 64(d). Once an original co-owner interest has been transferred, it ceases to be an original co-owner interest. Thus, only 25 percent of B's 33.33 percent interest were original co-owner interests. As a result, no change in ownership occurred in 2006 because only 50 percent of original co-owner interests had cumulatively been transferred. C 7/21/2009.

220.0669 **Step Transaction.** ~~A transaction involving several steps whereby land owned originally by parents is ultimately transferred to a newly formed family partnership is not insulated from the application of the step transaction doctrine under section 2, Chapter 48 of~~

Please note that the new proposed annotations contained in this CLD are drafts and may not accurately reflect the text of the final annotation

~~the Statutes of 1987, where the family partnership is held indirectly by the grandchildren as well as by the parents and children through trusts and corporations. C 2/28/95.~~

Delete - The statement of legislative intent in section 2, Chapter 48 of the Statutes of 1987 was amended by SB 1607 (Stats. 2006, Ch. 224) to specifically include transfers involving grandchildren.

350.0000 DISABLED VETERANS' EXEMPTION

350.0004 **Disability Rating.** ~~For a veteran to qualify for the disabled veterans' exemption on the regular assessment roll, he or she must be the owner of record as of the lien date when the liability for taxes attaches. Further, he or she must meet all of the qualifications for the exemption as of the lien date. Thus, a veteran who received a 100 percent disability rating as of July 1, 2002, would be eligible for the exemption on the following lien date, i.e., January 1, 2003, for the 2003-04 fiscal year and succeeding years. C 3/10/2004.~~

Delete – Superseded by subsequent law change. SB 1637 (Stats. 2006, Ch. 677) amended section 276.1 to specify that the exemption applies as of the date the USDVA disability rating, not the lien date.

630.0000 PERSONAL PROPERTY

630.0024 **Penalties.** ~~Penalties should be imposed only to the extent that a taxpayer's action has caused some amount of tax not to accrue to the taxing jurisdiction. Thus, an assessment should be reduced by the allowable amount of the exemption prior to computation of the 10 percent penalty required under Revenue and Taxation Code section 463. If the subtraction of the exemption from the gross assessed value is zero, then no penalty would be applicable. However, if the assessed value of the property exceeds the amount of the exemption, then the 10 percent penalty would be assessed on the value of that property for which an exemption is not available. For property that qualifies for one of the exemptions enumerated in Revenue and Taxation Code section 270 but for which a claim is untimely filed as provided by that section, the amount of the tax, interest, and penalty may not exceed \$250. C 12/30/98.~~

Delete – Guidance is contrary to statute. Statute does not provide the assessor with the authority to relieve the late filing penalty provisions in Revenue and Taxation Code section 463 for any organization, even if the organization is later granted exemption. Filing a property statement and filing an exemption claim form are two separate issues and must be treated separately. If an organization is required to file a property statement, this filing requirement is not relieved if the property is later exempted..

660.0000 POSSESSORY INTEREST

660.0302 **Term of Possession.** ~~When the stated term of possessor has expired but the lessee holds over and remains in possession, the assessor should regard the possessory interest as "extended or renewed", as defined in Property Tax Rule 21(h), and assess the extended or renewed interest as provided in Property Tax Rule 467. C 7/13/84.~~

Delete – Guidance is contrary to statute. Property Tax Rule 467 was repealed effective December 29, 1999. Its provisions were contrary to Revenue and Taxation Code section 61(b) as amended effective January 1, 1997.